No. 92-1625

IN THE
Supreme Court of the United States
OCTOBER TERM, 1992

INTERNATIONAL UNION,
UNITED MINE WORKERS OF AMERICA, *et al.*,

Petitioners,

v.

JOHN L. BAGWELL; CLINCHFIELD COAL CO.;
and SEA "B" MINING CO.,

Respondents.

On Writ of Certiorari to the Supreme Court of Virginia

BRIEF OF THE CENTER ON NATIONAL LABOR POLICY, INC. AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENT JOHN L. BAGWELL

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INTRODUCTION

Pursuant to Supreme Court Rule 37.3, the Center on National Labor Policy, Inc. ("CNLP") submits this brief *amicus curiae* in support of ~~petitioners~~ respondent. All parties have given written consent to its filing.

INTEREST OF THE *AMICUS CURIAE*

The Center on National Labor Policy, Inc. ("Center" or "CNLP") is a public interest legal foundation chartered to provide legal assistance to individuals whose statutory and constitutional rights in the labor arena have been violated by powerful, organized interests such as labor unions and governmental entities.

The Center, as a public-interest organization, believes that the individual rights of consumers, taxpayers, workers, and public citizens are paramount to the collective rights of private organizations such as labor unions. The Center has filed briefs amicus curiae advocating the validity of this public policy interest in other cases before the Court, including, *Riesbeck Food Markets, Inc. v. UFCW, Local 23*, No. 91-15; *Lehnert v. Ferris Faculty Assn., No. 89-1217; Koons Ford of Annapolis, Inc. v. NLRB*, No. 87-1305; *Breen v. ILGWU*, No. 83-1791; *Archie E. Brown v. FEC*, No. 81-1905; *Larry V. Muko, Inc. v. NLRB*, No. 80-1798; *Donald Schriver, et al. v. Pennsylvania Building and Construction Trades Council, No. 80-1257*; and *New York Telephone Co. v. N.Y.S. Dept. of Labor, No. 77-961*.

The parties to the instant case are primarily focusing on important constitutional and judicial review aspects of civil/criminal contempt under the Fifth and Fourteenth Amendments. Equally important, however, is the underlying substantive claim made by Petitioner and dismissed by the Supreme Court of Virginia — that certain enumerated public policy interests articulated by inferior state and federal courts have caused a divergence in the application of the civil and criminal contempt standards imposed by this Court.

The CNLP's primary interest in presenting the public interest where pressure groups attempt to affect the national good through illegality, is at stake here. However, beyond the narrow issues appearing in the CNLP's mandate, CNLP has an interest in the integrity of the courts and in lawful and peaceful societal behavior that is directly challenged by the Petitioners' efforts to avoid liability for the civil fines imposed by the courts below.

The issues in this case relate directly to the goals of the Center. Throughout the length of the strike against Clinchfield Coal Co. and Sea "B" Mining Co., ("the Pittston Coal Group," or "Pittston"), the Petitioners ("union" or "UMWA"), engaged in a campaign of terror against Pittston and the community in order to coerce, intimidate, and terrorize the Plaintiffs and the community into acquiescence to the demands of the UMWA.

The CNLP does not doubt that Petitioner will fully argue its interests here. However, because the interest of Petitioner in avoiding liability on the basis of procedural protections and upon the settlement agreement between it and Pittston, are without intimation of responsibility for violence in Southwest Virginia, the Petitioner's arguments are suspect. Clearly, the unions had full legal notice of the contempt orders processed against them before the state judge, but chose to ignore those orders. This they did at their own peril.

Likewise, the CNLP does not doubt that Respondent John L. Bagwell will fully argue his interests -- *e.g.*, those of the Commonwealth of Virginia -- in this case. However, because his interest is in collecting the fines and vindicating the integrity of the Virginia courts, his arguments will naturally focus upon those issues, rather than upon the broader public interest in public safety in the face of violence perpetrated on a massive scale by a radicalized labor union.

The CNLP respectfully submits that it is in a unique position to fully advocate the rights of the public and those individuals who have suffered from the actions of Petitioners, and those who were precluded from pursuing their livelihood based upon the decisions of private parties of which they are not a part.

The Center on National Labor Policy can thus bring to this case a diverse perspective not presently represented. Therefore, the Center's participation will assist the Court in obtaining full consideration of the public-interest issues.

QUESTION PRESENTED

Whether liquidation of coercive fines against civil contemnors who have failed to purge their contempt, ordered in the absence of the constitutional requirements for a criminal contempt proceeding, violates the Due Process Clause of the Fifth and Fourteenth Amendments?

STATEMENT OF THE CASE

This case arises on a Petition for a Writ of Certiorari to the Supreme Court of the Commonwealth of Virginia, 244 Va. 463, 463 S.E.2d 349 (1992), from that court's reversal of a decision by the Court of Appeals of Virginia vacating civil contempt fines imposed by the Circuit Court of Russell County against the UMWA. 12 Va. App. 123, 402 S.E.2d 899 (1991). The Circuit Court found those fines to be liquidated because of the violation by Petitioners of several injunctions imposed by the Circuit Court to preserve public order and Petitioners' failure to purge themselves of their contempt. *Amicus curiae* adopts the further statement of the case set out in Respondent John L. Bagwell's Brief.

STATEMENT OF FACTS

The facts of this case are set out by Respondent John L. Bagwell, Special Commissioner, in his brief and are adopted here. *Amicus curiae* also points out the following specific legal findings of the Circuit Court of Russell County of August 22, 1990, in support of its ruling:

1. That the "evidence presented by the plaintiffs as to each of the allegations of contemptuous behavior proves without question that the International UMWA was the author of these actions." Pet. App. 40a.

2. "The Court early on announced its purpose in imposing prospective civil fines the payment of which would only be required if it were shown the defendants disobeyed the Court's orders. That purpose was to compel compliance with the Court's orders which were entered to protect the rights of the plaintiffs and the public." Pet. App. 40a.

3. "The Court granted much of the relief requested finding the defendants were interfering with the rights of the plaintiffs *and* those of the general public." Pet. App. 44a (emphasis in original).

4. "[W]ith the passage of time....[t]he focus and loci of defendants' unlawful conduct shifted from company property and facilities to the public highways and private homes and businesses. So, as the strike proceeded, the protection sought from and granted by the Court was more and more for the general public." Pet. App. 44a.

5. "Where, as here, the public's welfare is so intimately involved and the Court has granted civil contempt relief payable in effect to the public, and where judgment has been announced and entered, the public's interest must be considered." Pet. App. 47a.

6. With regard to the Respondents' request to purge its civil contempt with community service, the Circuit Court found "if ever a party has come to the bar seeking equity with unclean hands, the defendants in the case have....The International, U.M.W.A. remains defiant and deserves no relief." Pet. App. 47a.

SUMMARY OF ARGUMENT

This Court has had repeated opportunities to characterize civil and criminal contempts based upon the factual situations in which they arise. In the instant case, Petitioners were adjudged to be in civil contempt of eight lawful court orders. These orders provided a prospective fine schedule in order to persuade the Petitioner unions to forsake violence upon the employer and the public as a tool to gain what they could not obtain peacefully at the bargaining table with their employers.

In *Hicks v. Feiock*, 485 U.S. 624 (1988), *United States v. United Mine Workers of America*, 330 U.S. 258 (1947), and *Gompers v. Bucks Stove & Range Co.*, 221 U.S. 418 (1911), this Court set out the range of situations wherein civil contempt sanctions may lie. The state and federal courts have understood these precedents to mean that when a court adjudicates a party for contempt for the purpose of punishing a party for actions or behavior set out in prior court orders and these being punitive sanctions, the order is criminal contempt. When the contempt results from violation of a lawful court order that requires affirma-

tive acts or non-acts, upon which the sanction can clearly be avoided, then the party holds the "keys of prison in [his] own pockets," and this is civil contempt. *In re Nevitt*, 117 F. 448, 461 (8th Cir. 1902).

In the courts below, Petitioners, as parties, had in hand written injunctive orders and were represented by multiple counsel. See Pet. App. 55a, 61a, 64a, 71a, 83a, 97a, 102a, 109a, 113a, 118a. They were ordered to pursue non-violent courses of action and ordered to take affirmative steps to prevent violence in the coalfields and report the same to the court. Rather, like every past strike in the last seventy years, the UMWA has acted above the law and flaunted an attitude of dual contempt for police authority and compliance with the peaceful statutory scheme of labor relations envisioned by Congress in the National Labor Relations Act.

Moreover, the labor relations caselaw shows that a settlement of an underlying dispute between prospective collective bargaining partners, does not cause liquidated contempt orders to evaporate. The law is clear, inchoate and pending contempt citations fall with settlement of the underlying case; final contempt orders are enforceable. This is nowhere demonstrated in Petitioners' Brief on the Merits, although they promised to display such diversity in the Second Question Presented for Review to this Court and which was granted review by this Court. For this reason alone, Question Two was improvidently granted and should be dismissed.

Consequently, *amicus curiae*, respectfully shows that the matters adjudicated by the Virginia courts against the UMWA was in pursuance of civil contempt remedies. Nowhere along the long highway of over eight injunctions did the Petitioners ever seek to comply with the state court's injunctions or to purge themselves of contempt. The failure to comply and purge, "hallmark" indicators in matters of civil contempt, were not sought by the Petitioners.

Therefore, this Court must find that the Virginia courts acted properly in exercising lawful and appropriate police power in attempting to restrain Petitioners unprotected acts under federal and state labor laws. These same actions undeniably caused seriously

bodily and property injuries to many individuals and, in the past, have resulted in deaths too numerable to count. If stripped of authority to immediately act to protect the sanctity of their orders and to compel obedience, the entire scheme of labor relations authority envisioned by Congress will be undermined.

ARGUMENT

I. CIVIL CONTEMPT IS AN INHERENT REMEDY ALWAYS AVAILABLE TO THE COURT AND THAT CAN BE EMPLOYED BY THE COURT TO COERCE FUTURE COMPLIANCE WITH ITS ORDERS

American jurisprudence has long been recognized the judicial remedy of contempt. The aim of civil contempt is to coerce a defendant into compliance with a court order and to compensate the complainant for losses. In this way, civil contempt intends to compel compliance with court orders, enforce private rights, and to administer remedies. It preserves the powers and vindicates the dignity of the court. *Willy v. Coastal Corp.*, 112 S. Ct. 1076, 1079 (1992) ("civil contempt is designed to coerce compliance with the court's decree"); *Local 28, Sheet Metal Workers Int'l Ass'n v. EEOC*, 478 U.S. 421, 443 (1986) ($150,000.00 fund established "to secure compliance" with "earlier orders" was civil contempt).

The contingent nature of the sanction is the "hallmark" distinction between civil and criminal contempts. *IBM v. United States*, 493 F.2d 112, 115 (2d Cir. 1973), **cert. denied**, 416 U.S. 995 (1974) ($150,000.00 fine per day found sufficient to coerce compliance). Where the power imposed exacts penalties "to punish petitioners for their contemptuous conduct," *Local 28, Sheet Metal Workers*, 478 U.S. at 444, the order is of criminal contempt; those prosecuted to preserve and enforce the rights of private parties are civil, remedial, and coercive. *Hicks v. Feiock*, 485 U.S. 624, 631 (1988) ("the critical features are...'for civil contempt the punishment is remedial, and for the benefit of the complainant. But if for criminal contempt the sentence is punitive, to vindicate the authority of the court.'"). While distinctions between civil and

criminal contempt are sometimes difficult to discern,[1] the primary nature of the remedy remains -- contempt is the power by which the court enforces its will.[2]

Moreover, in civil contempt situations, once the condemnor ceases to defy the court and orders his behavior in compliance with the court order, the contempt ceases. In criminal contempt, that power is out of the hands of the condemnor; it cannot be purged. *Ochoa v. United States*, 819 F.2d 366 (2d Cir. 1987).[3]

In the above-styled case, Pittston invoked the judicial power of the trial court to curtail the potentially explosive nature of the

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[1] This Court recognized this difficulty in its landmark decision upholding an award of contempt against one of the parties to the instant action – the UMWA:

> It may not be always easy to classify a particular act as belonging to either one of these two classes. It may partake of the characteristics of both.

United States v. United Mine Workers of Am., 330 U.S. 258, 299 n.70, citing *Bessette v. W.B. Conkey Co.*, 194 U.S. 324 (1904).

[2] An important measure of appellate court deference is in their response to challenges to trial court determinations of contempt which may be or are based upon orders which are later reversed:

> the power to decide includes the power to decide wrong, and an erroneous decision is as binding as one that is correct until set aside or corrected in a manner provided by law.

Nicholas v. Commonwealth, 186 Va. 315, 42 S.E.2d 306 (1947), **citing with approval** *Freeman on Judgments* 5th ed. § 357, p. 744. Such orders are lawful within the meaning of contempt statutes until reversed by an appellate court. *United States v. UMWA*, *id.*, at 293.

[3] Another recognized distinction in criminal contempt is whether the penalty for noncompliance is a debt/fine to be paid to the court or imprisonment; for civil contempt, whether the punishment is remedial for the benefit of the complainant, *Hicks*, 485 U.S. at 632, or issued to affect significant public interests. See *Baltimore City Dep't of Social Servs. v. Bouknight*, 488 U.S. 1301, 1305 (1988) (to obtain production of a child is civil contempt) (Rehnquist, C.J.; Circuit Justice) (Motion for Stay of Judgment); *Baltimore City Dep't of Social Servs. v. Bouknight*, 110 S. Ct. 900, 905 (1990) ("the Fifth Amendment privilege may not be invoked to resist compliance with a regulatory regime constructed to effect the State's public purposes unrelated to the enforcement of its criminal laws.").

outstanding issues between the parties.[4] Federal labor policy favors the maintenance of industrial peace. The Congress has, wisely or not, adopted for this purpose the mechanism of collective bargaining. *Vaca v. Sipes*, 386 U.S. 171, 182 (1967). Inherent in the creation of a mechanism for collective bargaining through the National Labor Relations Act, 29 U.S.C.A. § 141, *et seq.*, is the private resolution of disputes through voluntary agreements, both in the interests of judicial economy and to allow the unimpeded functioning of the free market. *West Rock Lodge No. 2120, IAMAW, AFL-CIO v. Geometric Tool Co.*, 406 F.2d 284, 286 (2d Cir. 1968); *Barbour ex rel. NLRB v. General Service Emp. Union Local No. 73*, 453 F.Supp. 694, 698 (N.D. Ill. 1978). Pittston requested the protection of the trial court from the UMWA which was replicating its long history of violence in the coal fields of the United States in labor disputes.[5]

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[4] Federal legislation preempts a great deal of state court jurisdiction to hear issues of labor disputes. But though the Federal government dominates the field of labor law, there is no blanket preemption of state court action. This Court has specifically held that states may act to preserve:

> interests so deeply rooted in local feelings and responsibility that, in the absence of compelling congressional direction, [the court] cannot infer that Congress ha[s] deprived the States of the power to act.

Sears, Roebuck & Co. v. San Diego County Dist. Council of Carpenters, 436 U.S. 180, 188, n. 13, 98 S.Ct. 1745 (1978), **citing** *Farmer v. Carpenters*, 430 U.S. 290, 296-97, 97 S. Ct. 1056, 51 L.Ed. 2d 338 (1977). The injunctions entered herein are based upon Virginia's Right to Work law. Va. Code. Ann. § 40.1-58 *et seq.* (Michie 1950).

[5] See Thieblot and Haggard, *Union Violence: The Record and Response by Courts, Legislatures, and the NLRB*, pp. 79-118, Labor Relations and Public Policy Series, No. 25, The Wharton School-University of Pennsylvania [hereinafter "Thieblot & Haggard"], for a narrative regarding the long history of union violence in the coal fields. Thieblot & Haggard document the long history of unlawful means used by the UMWA in seeking economic goals. Particularly relevant to the above-styled action are the roving caravans appearing in the 1977-78 strike (p. 101), mass picketing its campaign of intimidation in pursuit of recognition [p. 84, **citing** *UMWA District 2, et al. v. Mercury Mining & Constr. Corp.*, 96 N.L.R.B. 1389 (1951)], the intimidation of nonunion, nonstriking coal company workers [p. 85, *Blue Ridge Coal Corp. v. UMWA*, 129 N.L.R.B. 146, 159 (1960)], destruction of state police property, and in efforts by judicial authorities to prevent

(continued...)

Nonetheless, Pittston invoked the inherent powers of the trial court in seeking injunctive relief against the Petitioners International Union, UMWA, District 28, UMWA, numerous locals, and certain individual union officials.[6] Pursuant to the injunctive relief rendered by the trial court, the unions appeared on many occasions by Orders to Show Cause why they should not be held in civil contempt.

However, once the economic dispute between the parties was resolved, the Petitioners and Respondents Pittston Coal Group appeared before the trial court jointly requesting complete dismissal.[7] If this Court reverses the decision of the Supreme Court

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[5](...continued)
actual "small wars" initiated by organized mine workers upon nonunion miners. *Prater v. UMWA*, 793 F.2d 1201 (11th Cir. 1986).

[6] Petitioners previously challenged the jurisdiction of the Circuit Court to enter the orders underlying the contempt, based upon the theory of preemption by Federal labor law. This challenge is without rational basis, and was been rejected by the trial court and by the United States District Court for the Western District of Virginia on a Petition for Removal. The issue is *res judicata*.

[7] The proposition that civil contempts must be dismissed upon settlement is at odds with the jurisprudence in Virginia. In *Carter v. Commonwealth*, 96 Va. 791, 32 S.E. 780 (1899), the Supreme Court of Virginia identified the right of a court to protect itself through contempt to be an inherent right directly vested from the Virginia Constitution. In fact the legislature has provided for this authority by statute, VA. Code §§ 18.2-456(1), (5). These provisions provide that:

> The courts and judges may issue attachments for contempt, and punish them summarily, only in the following cases:
> (1) Misbehavior in the presence of the Court, or so near thereto as to obstruct or interrupt the administration of justice;
> ***
> (5) Disobedience or resistance of an officer of the court, juror, witness or other person to any lawful process, judgment, decree or order of the court.

The Supreme Court of Virginia has interpreted the fifth provision to strictly apply to refusals to obey orders of the court. *Forbes v. State Council*, 107 Va. 853, 60 S.E. 81 (1908); *Laing v. Commonwealth*, 205 Va. 511, 137 S.E.2d 896 (1964). Reversal of the Supreme Court of Virginia's decision upholding the fines threatens the fabric of this authority.

of Virginia upholding the fines, this Court will have eviscerated completely the police powers of the states in labor disputes.

Clearly, in cases in federal and state courts nationwide, merely because an employer and labor union eventually enter a collective bargaining agreement, does not mean that violent and illegal union actions pursued to extort bargaining advantages, previously enjoined by a state court and adjudicated to be civil contempt, must be dismissed as the Petitioners argued in their second Question Presented in the Petition for Writ of Certiorari. In fact, the cases to the contrary are legion. Noticeably absent from the Brief on the Merits is any reference to the "conflict with numerous lower court decisions involving settlement agreements" the Question upon which this Court granted *certiorari* to review. Petition at 23. Without proper precedential authority, *amicus curiae* contends that the writ was improvidently granted on this Question and should now be dismissed.

For example, in *Spallone v. United States*, 493 U.S. 265, 110 S. Ct. 625 (1990), this Court upheld daily fines imposed by a district court to gain compliance with a consent judgment. There, the Court upheld increasing daily fines against the City of Yonkers, but not its individual city council members, as a means to coerce compliance with the district court's orders, even if it might bankrupt the city. *Id.* at 633. The Court observed that the equity court must have adequate "remedial powers" and "various methods by which to ensure compliance with its remedial orders." *Id.* at 632.

Further, in *Local 890, Int'l Union of Mine, Mill & Smelter Workers v. New Jersey Zinc Co.*, 58 N.M. 416, 272 P.2d 322 (1954), the Supreme Court of New Mexico held that an injunction issued to prevent further violence and mass picketing out of which civil contempt judgments had been entered, were not to be dissolved merely upon termination of the union's strike. The Court distinguished the factual situation of contempt citations adjudicated prior to settlement as enforceable with those contempts that had yet

to be adjudicated. **See** *New Jersey Zinc Co. v. Local 890, Int'l Union of Mine, Mill & Smelter Workers*, 57 N.M. 617 (1953).[8]

Similarly, in *LRC v. Fall River Educ. Ass'n*, 105 L.R.R.M. (BNA) 3157 (Mass. Sup. Ct. 1979), a union had engaged in an unlawful strike for two weeks in violation of a temporary restraining order. Despite the order, the strike continued and the court imposed daily fines upon the union. A collective bargaining agreement was then signed and the teachers went back to work. After that, the city and union sought to withdraw the case and reduce or revoke the fines. Moreover, the city waived any right to collect damages. The Massachusetts court refused to comply with this offer. In language ringing with the thoughts expressed by Judge McGlothlin (the Virginia trial court judge), the court found:

> The School Committee has thus invoked the powers and sanctions of this court, used them as a bargaining tool, and then, having achieved its purpose, left the court and the Labor Relations Commission in the unenviable position of having to deal with the consequences of its abandoned court action.

105 L.R.R.M. (BNA) at 3160.

The court determined that the fines it had imposed were for civil contempt and the awards were to be for the benefit of the state or the school board to remedy their losses. The conundrum for a court in these circumstances was summed up very well:

> The problem with the coercive, or *in terrorem* fine as it is sometimes called, is that it is not coercive at the time

[8] In this prior appeal, the New Mexico Supreme Court dismissed the union's civil contempt proceedings arising out of a contempt citation that had been filed yet not acted upon. Finding *Gompers v. Bucks Stove & Range Co.*, 221 U.S. 418 (1911), applicable, the Court concluded that a civil contempt proceeding in equity that provides remedial relief cannot be sustained after termination of the proceedings because there is no need for further equitable relief or judicial requirement to coerce compliance with the court's order.

> it is collected. At the time it is imposed, the prospective coercive fine tends to motivate the contemnor to comply with the court's decree. At the time of collection, however, the defendant-contemnor has already purged himself of contempt by complying with the court's order. The fine, designed to have an effective threat, probably does not accurately reflect the complainant's damages and is therefore not remedial. The chameleonic characteristic of the coercive fine has not been discussed by the federal cases approving such fines. It can be analogized, however, to the suspended jail sentence for a definite term upheld in *Jencks v. Goforth*, 261 P.2d 655, 32 LRRM 2708 (1953).

105 L.R.R.M. (BNA) at 3162.

The court concluded that "it is the date the decree is entered, and not the date payment is enforced, that controls whether the sanction imposed is punitive or coercive." *Id.* The court affirmed its civil contempt findings and held that since its fines were prospective only, the union held the keys to its own release, and the fines were enforceable. "If this sanction is to be effective in the future, it must be enforced in the present case. The court is not merely vindicating its authority...but protecting the rights of complainants in future contempt actions and insuring an effective alternative to coercive imprisonment." *Id.* at 3162-63. **See** *Bhd. of Locomotive Firemen & Engrs. v. Bangor & Aroostook R.R. Co.*, 380 F.2d 570, 582 (D.C. Cir. 1967) (prospective coercive fines enforceable despite reversal on appeal). *Amicus* concurs in these findings.

A similar result was reached in *School Dist. of Pittsburgh v. Pittsburgh Fed. of Teachers*, 96 L.R.R.M. (BNA) 2852 (Pa. Commw. Ct. 1977), **rev'd on other grds**, 486 Pa. 365 (1979), where the trial court had issued an injunction to protect the public health, safety and welfare and imposed a $25,000 initial and succeeding $10,000 fine per day upon the union for civil contempt. The union subsequently settled the strike. The court found the purpose of its civil contempt citation was to coerce prospective

compliance with the injunction and that the injunction was akin to a final adjudication on the merits of the complaint. Therefore, when the strike settled, the fines did not abate. **See also** *Board of Water Works v. Pueblo Water Empl. Local 1045*, 196 Co. 388 (Co. 1978) (civil contempt fines against union upheld for violating injunction); *Board of Educ. of Harford County v. Harford County Educ. Ass'n*, 94 L.R.R.M. (BNA) 2658 (Md. 1976) (contempt upheld where union official advocated that the union's continuance of the strike was to obtain a settlement with the employer, thereby achieving the court's very mandate).

In a non-settlement situation, termination of a union's enjoined actions was held not to warrant termination of the proceedings. In *International Ass'n of Firefighters, Local 526 v. Lexington-Fayette Urban County Government*, 95 L.R.R.M. (BNA) 2923 (Ky. 1977), the Kentucky Supreme Court upheld a civil contempt fine arising out of a refusal by the union to abide by a restraining order in holding a ten-day strike. The Court affirmed that the union was guilty of civil contempt although the union was back to work at the time. The federal courts in these situations also impose no restriction on enforcement of civil contempt fines after the recalcitrant party complies with an injunction. **See** *Clark v. International Union, UMWA*, 752 F. Supp. 1291, 1300 (W.D. Va. 1990).

In *Clark*, the federal district court acting in the same strike at issue in the case at bar, but with the National Labor Relations Board as plaintiff, also issued civil contempt fines against the union petitioners here. It rejected the unions' contentions that the court's prospective fines were criminal in nature and that the private settlement with Pittston made the fines "moot." 752 F. Supp. at 1300. That court correctly distinguished *Gompers v. Buck's Stove & Range Co.*, 221 U.S. 418 (1911), by showing that this Court held that:

> where a court imposes *criminal* sanctions followed by settlement of the underlying dispute, no remand for *civil* contempt proceedings may take place in connection with the case. The *Gompers* Court did not have before it (as the court here does) civil contempt fines that were

> imposed in proceedings prior to settlement of the underlying dispute.

Id (emphasis in original).[9]

Finally, in *Cincinnati v. Cincinnati Dist. Council 51*, 135 Ohio St. 197, 299 N.E.2d 686, 84 L.R.R.M. (BNA) 2241 (1973), **cert. denied**, 415 U.S. 994 (1974), the Supreme Court of Ohio affirmed that prospective contempt awards against a union can be enforced after the union returns to work.

Accordingly, this Court should affirm the Supreme Court of Virginia's decision. Contrary to Petitioners' assertions, the Supreme Court of Virginia's conclusion is consistent with the decisions of this Court and with the jurisprudence in other states.

II. THE CHANGED ECONOMIC RELATIONS PECULIAR TO THE PARTIES DO NOT JUSTIFY EVISCERATION OF THE TRIAL COURT'S EFFORT TO VINDICATE ITS AUTHORITY

Pittston's and the UMWA's agreement to terminate activity in violation of the trial court's order based upon the "settlement of the strike," rather than in compliance with the trial court's order, is a direct affront to the judiciary. Joint Motion, 1/24/90. This course of action is to the detriment of the community and the rule of law.[10] While Pittston was certainly within its rights to waive its

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[9] Noticeably, the unions here did not file a notice of appeal to the United States Court of Appeals for the Fourth Circuit.

[10] Respondents have asserted that the union leadership consistently preached the philosophy of non-violence in their actions during the strike. However, the unions failed utterly in their affirmative duty to report violations of the injunctions, as ordered by the trial court. No reports of violations came from them, although this affirmative act was ordered. Pet. App. 116a ¶ 13. The union did not cut off strike benefits to those participants participating in unlawful activity; it opposed efforts before the NLRB to have perpetrators of violence terminated by the

(continued...)

remedies under the trial court's ruling,[11] it is inappropriate that Petitioners should now seek to avoid their obligation to pay those amounts compensating the Commonwealth and its municipalities.[12]

The trial court made it clear in its August 22, 1990, Ruling that it required nothing more than respect for and adherence to the law of the Commonwealth when it prospectively set the fines herein. When Petitioners failed to comply, the trial court appropriately imposed and liquidated the fines.[13] It was not merely the private interests of the parties that were at stake; also at stake was the very dignity of the trial court.

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[10](...continued)
affected coal companies. Instead, the union affirmatively supported those union members who violated the orders of the trial court.

The union also actively supported those members who broke the law. The Executive Board for District 28 offered the District's office building as security for bail bonds securing the release of those accused of crimes. This condonation and ratification of the illegal activity has been previously held to demonstrate union liability. *United Bhd. of Carpenters v. Humphreys*, 203 Va. 781, 127 S.E.2d 98 (1962), **cert. denied**, 371 U.S. 954 (1963). In *Prater*, 793 F.2d at 1210-11, the United States Court of Appeals for the Eleventh Circuit found the International UMWA's failure to issue orders to prevent violence, failure to repudiate a single act of violence, failure to investigate violence, and failure to discipline any union member for violence when under an obligation to do so, was evidence of ratification of those actions by its membership.

[11] Such rights certainly fall within the province of a party recompensed in a judgment for civil contempt. "[F]or civil contempt the punishment is remedial, and for the benefit of the complainant." *Gompers v. Buck's Stove & Range Co.*, 221 U.S. 418, 441 (1911).

[12] "[I]f the case is civil and the punishment is purely remedial, there is also a vindication of the court's authority." *Id.*, at 443, 31 S.Ct. at 498.

[13] The union's did not evidence any will to enforce a publicly claimed philosophy of lawfulness, and in fact advocated a campaign of "civil disobedience." The unions attempt to equate non-violent lawfulness with civil disobedience. This is a false equation. Inherent in the practice of civil disobedience is the breaking of laws. While one may certainly practice civil disobedience and be non-violent, one is *by definition* a lawbreaker.

In this light, the essential element of federal jurisprudence applicable to review of civil contempt fines and relevant to the instant case, is that of purgation.[14] However, the Petitioners fundamentally misconstrue this important point in their own Brief at 11, where they argue that "basic criminal procedure" must apply where " the contempt order: ...(3) structures the sanction so that the defendant, once he has acted, cannot thereafter purge the contempt." Hence, by their own admission, criminal contempt refuses to apply rules of purgation whereas civil contempt does.

Here, the trial court provided Petitioners with repeated opportunities to purge themselves of their contempt, which purgation could have been accomplished by complying with the trial court's orders and by actively working to prevent further acts of violence by its membership acting in pursuit of the unions' approved strike goals. Petitioners did not choose to do so. Neither Petitioners -- nor their partners in the Joint Motion -- are entitled to the relief which Petitioners now seek from this Court.

Furthermore, the fines do not take on the character of punitiveness since they were not "payable to the court" as the Petitioners repeatedly misstate. See Brief at 20. Rather, they were fully compensatory to the jurisdictions and taxpayers involuntarily entangled in the long throw of the unions' web of violence.

A. PRIVATE ECONOMIC RELATIONS, DESPITE ALLEGED "PUBLIC INTEREST" RAMIFICATIONS CANNOT SUPERSEDE THE RULE OF LAW AND PUBLIC SAFETY

The trial court of Virginia recognized that this dispute has cost the Commonwealth millions of dollars in added police protection

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[14] This is the stage at which the court offers the contemnor the opportunity to purge himself of the contempt. *OCAW, Int'l Union, AFL-CIO v. NLRB*, 547 F.2d 575, 581 (D.C. Cir. 1976). Purgation is necessary to terminate a valid contempt order. *Windsor Power House Coal Co. v. District 6, UMWA*, 530 F.2d 312, 316 (4th Cir. 1976); *Carbon Fuel Co. v. UMWA*, 517 F.2d 1348, 1349 (4th Cir. 1975), citing *De Parq v. United States Court for the So. Dist.*, 235 F.2d 692, 699 (8th Cir. 1956).

to maintain the public peace and to prevent the destruction of private property through violent acts. Pet. App. 44a. Accordingly, that court ordered a certain portion of the civil contempt fines to accrue to the Commonwealth and local municipalities. These fines were appropriate recognition of and compensation to damaged parties.[15]

No matter the outcome of this case, the trial court faced continued contempt, both civil and actual,[16] by the Petitioners, and if the decision of the Supreme Court of Virginia is reversed, every other trial court judge will be faced with a similar conundrum -- risk expending limited judicial resources to protect the dignity of the judiciary and the public or not. Such equivocality demeans the authority for all of the courts of this nation. It also removes one of the only effective weapons available to the courts to prevent the type of union-motivated terrorism of the type perpetrated in the coalfields of Southwest Virginia.

Reversal of the decision of the Supreme Court of Virginia would reduce the judiciary to mere weapons in private economic struggles spilling over into terrorization of the public at large. Once the private side of the conflict ends, the parties have finished consuming the court's time (and the judicial process to strengthen their strategic bargaining positions), "kissed and made up," the parties profess that the trial court's actions were inimicable to their interests and are subject to revision and derision. The parties' appearance arm in arm before the trial court below was nothing less that an absolute disregard for the adjudicative position of the equity court, motivated by nothing more than their private economic interests.

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[15] Insofar as the Court ordered compensation to the appropriate municipalities, it has fulfilled the remedial nature of civil contempt. *Major v. Orthopedic Equip. Co., Inc.*, 496 F.Supp. 604 (E.D. Va. 1980).

[16] By actual contempt, *amicus* refers to the active disregard of the Court and its authority by the parties hereto. *Amicus* refers to the state of mind of the parties, not that which might appropriately be adjudicated by this Honorable Court.

That end is the gravamen of the Petitioners' offer here. The proposal offers no principled reason for the dismissal of the fines.[17] The trial court initially imposed the fines as a coercive measure of enforcing the law, not only defending Pittston's rights, but stating to the community that it would be protected by vindication of the court's powers.

B. THE UNIONS' EFFORTS TO AVOID THE FINES CONFUSES COMMUNITY INTEREST WITH THE PARTIES' PAROCHIAL INTERESTS

As demonstrated above, Petitioners confuse their parochial economic interests with those of the community. Not only is this an inappropriate consideration in the instant context, it is incorrect.

The local community has an overriding interest in the rule of law, especially in the maintenance of pacific labor relationships. Said goal is not and has not been advanced by the Petitioners herein. As shown by Thieblot & Haggard, *infra*, Note 5, the history of the UMWA has been one of unmitigated violence. An individual appearing before a court on criminal charges for violence with the frequency with which Petitioners appear would have great difficulty in convincing that court that he should not suffer punishment for his misdeeds.

However, in the instant case, this Court faces no such problem. The fines imposed herein were civil, not criminal. They were remedial and coercive, not punitive. The simple truth is that they

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[17] Under analogous facts, the Sixth Circuit Court of Appeals found no disrespect in the Government's recommendation to reduce the level of a civil contempt fine, even though the District Court denied, and the Court of Appeals upheld, the motion to reduce the fine. *United States v. Work Wear Corp.*, 602 F.2d 110, 116 (1979). However, *amicus* would respectfully submit that no such "proper and commendable" action has occurred herein. In the matter presently pending before the Court, there has not even been a minimal showing of "just cause or ...mitigating circumstances." Failing that, dismissal of the fines imposed herein would "sanction mere lip service to [the Circuit Court's] Orders." 602 F.2d at 114.

were ineffective in coercing the Petitioners into the court-mandated course of action. Failing compliance -- purgation of the initial contempt -- Petitioners have not met the fundamental precondition to coming before any court and requesting dismissal of the fines herein. The terrorism only stopped when the unions' economic demands against Respondents Pittston Coal Group were satisfactorily resolved.

The trial court's active, specific mandate herein was insufficient to compel compliance in this case. An entire jurisprudence of failure to enforce fines against unions does little but support the thesis that enforcement is required to convince these unions, and others, that violence as an instrument of coercion is no more valid in labor relations than it is in domestic relations, or other personal, private relationships. Other courts have failed to make this message clear. This Court has a unique opportunity to do so.[18]

C FAILURE TO ENFORCE THESE FINES WILL HAVE A NEGATIVE IMPACT UPON THE COMMUNITIES' INTEREST IN MAINTAINING PEACE IN LABOR DISPUTES

Should the Supreme Court of Virginia's decision be reversed, the community will suffer a negative impact. As set forth previously, the judiciary's esteem in the community is immediately negatively impacted by retreat from the positions taken in imposing the contempt fines herein. Though likely within the discretion of a trial court, lacking adequate factual and legal basis for such a retreat, this Court would disserve itself and the entire judiciary by substituting its judgment on this issue for that of the Virginia trial court.

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[18] Perhaps the most amazing characteristic of union violence is the singular unwillingness of the courts to enforce their will. The analogy to the domestic violence situation is particularly appropriate. Were a spouse to engage in the conduct which unions have been found to do, particularly the UMWA, not only would that conduct be grounds for divorce, said spouse would be subject to criminal prosecution. Employers may not divorce a certified union; a court may not put an association in jail. The only effective remedy against union violence is a fine; it is the only sanction applicable to a union.

The message that such action would send is clear. Pittston came before the trial court requesting relief from activities of the Petitioners that were illegitimate methods of coercion.[19] The trial court took action because, *inter alia*, the actions of the Petitioners were disrupting the public and imposing great costs upon those who were, at best, only peripherally related to the conflicting issues. Once before the trial court, it was necessary to take action based upon the broader public interest in public peace. The court's goals should not now be sacrificed to the chimera of "labor peace," which in other contexts -- as recognized by the trial court -- is called extortion. The parties would now have the trial court, which courageously exercised its power during a time of strife in an effort to minimize the adverse impact of the parties' conflict on the community, forget that violent acts occurred, and that the mandate of the trial court was ignored. *Amicus* respectfully submits that this the Court should not do, and should therefore reject the Petitioners' instant efforts.

In ruling on the fines herein, the trial court clearly stated that its goal was to coerce the union into compliance with the outstanding orders, and to end the violence surrounding the dispute. Within the clear tradition of civil contempt, that court placed the "keys of [the union's] prison in their own pockets." *In re Nevitt*, 117 F. 448, 461 (8th Cir. 1902).

In fact, the ends sought by the trial court were never achieved. In spite of the threat, and imposition, of tens of millions of dollars

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[19] Thieblot & Haggard cite eight purposes for union violence, five of which seem relevant to the instant dispute, *viz.*:

2. *As a bargaining device*, to cause personal or economic harm at costs that exceed the costs of settlement on the union's terms....
3. *As an attention getter*, to generate public and political pressure for a quick settlement....
4. *As an enforcement mechanism*, to insure solidarity among strikers....
6. *As a disruptive tactic*, to prevent nonunion companies from working during strikes....
8. *As a means of generating fear*, to create an "aura" for the meanness of the union, so as to condition future as well as current bargaining.

Thieblot & Haggard, p. 9 [italics in original].

in fines against the union, Petitioners never sought to end the cycle of lawlessness and violence surrounding the dispute. The goals in imposing the fines never having been achieved through the free will of the union and its membership, the condition for dismissal of the fines was not met. The Petitioners and their members made a conscious, knowing choice to disregard "what the law made it [their] duty to do." *Penfield Co. v. SEC*, 330 U.S. 585, 590 (1947). Having done so, they should now pay the price.

CONCLUSION

There is little question that the Petitioners herein have serious disregard for the rule of law in general and for the power of the courts in particular. There simply is, and should be, no "union exception" to the normal principles governing the civil contempt powers of the courts of the nation.

WHEREFORE, for the reasons set forth above, the Center on National Labor Policy, Inc., respectfully requests that this Honorable Court affirm the decision of the Supreme Court of Virginia and affirm the full amount of the civil contempt fines imposed against the Petitioners.

Respectfully submitted,

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